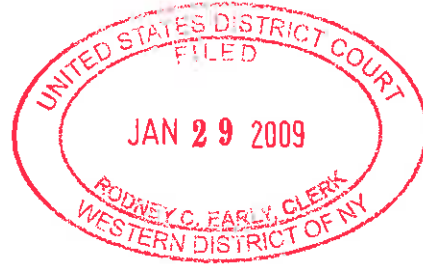


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



-PS-

ARRELLO BARNES, 00-A-0597,

Plaintiff,

-v-

DECISION AND ORDER
07-CV-6197L(Fe)

FEDELE, FURMAN, MURPHY, KERBEIN,
T. STANLEY, HOWARD MATASAR,
CHAPPIUS, JR., A. BARLETT,
P. CORCORAN, M. MCGINNIS, NAPOLI,
JOHN NUTTAIL, BRIAN FISHER and
THOMAS EAGEN,

Defendants.

Plaintiff Arrello Barnes is an inmate proceeding pro se and has been granted permission to proceed in forma pauperis. The pleading was evaluated pursuant to 28 U.S.C. §§ 1915 and 915A, and the Court directed service by the U. S. Marshal upon the remaining defendants listed above. Defendants P. Corcoran and John Nuttail have been served and defendant Nuttail has Answered. The U. S. Marshal has indicated that service on Murphy and Howard Matasar was refused. The Court has not received any further information regarding the service of the remaining defendants.

Once a plaintiff is granted permission to proceed in forma pauperis, the responsibility for effecting service of the summons and complaint shifts from the plaintiff to the court. See 28 U.S.C. § 1915(d); Wright v. Lewis, 76 F.3d 57, 59 (2d Cir. 1996). If a pro se prisoner provides the information necessary to identify

the defendant, courts have uniformly held that the Marshals' failure to effect service automatically constitutes good cause within the meaning of Fed.R.Civ. 4(m). Moore v. Jackson, 123 F.3d 1082, 1085-86 (8th Cir. 1997). Accordingly, the time in which to serve is hereby extended for 120 days from the date on which the Attorney General provides the information discussed below.

Pursuant to Valentin v. Dinkins, 121 F.3d 72 (2d. Cir. 1997) (per curiam), the Court requests that the Attorney General of the State of New York ascertain the full names of the defendants identified by their last names alone: Fedele, Furman, Murphy, Kerbein. The Attorney General is also requested to provide the addresses where all of the unserved defendants - Fedele, Furman, Murphy, Kerbein, T. Stanley, Howard Matasar, Chappius, Jr., A. Barlett, M. McGinnis, Napoli, Brian Fisher and Thomas Eagen - can currently be served. The Attorney General need not undertake to defend or indemnify these individuals at this juncture. This order merely provides a means by which plaintiff may name and properly serve the defendants as instructed by the Second Circuit in Valentin.

The Attorney General of the State of New York is hereby requested to produce the information specified above by **March 4, 2009**. To assist the Attorney General in obtaining the requisite information, the Clerk of the Court is directed to send a copy of this Order to DOCS' Counsel's Office at New York State Department

of Correctional Services, State Campus Office Building #2, 1220 Washington Avenue, Albany, New York 12226. Once this information is provided, plaintiff's complaint shall be deemed amended to reflect the full names of the defendants, summonses shall be issued and the Court shall direct service on the defendants.

Further, pursuant to 42 U.S.C. § 1997e(g)(2), the defendants are directed to answer the complaint.

ORDER

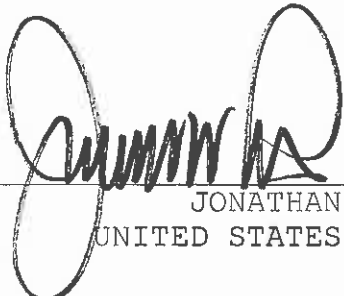
IT IS HEREBY ORDERED that the Attorney General of the State of New York respond to this Order by **March 4, 2009**;

FURTHER, that the time in which to serve is hereby extended for 120 days from the date on which the Attorney General provides the requested information;

FURTHER, that upon receipt of the requisite information from the Attorney General, the United States Marshal serve copies of the Summons, Complaint, and this Order upon the remaining defendants Fedele, Furman, Murphy, Kerbein, T. Stanley, Howard Matasar, Chappius, Jr., A. Barlett, M. McGinnis, Napoli, Brian Fisher and Thomas Eagen without plaintiff's payment therefor; and

FURTHER, that the defendants are directed to answer the complaint.

IT IS SO ORDERED.



JONATHAN W. FELDMAN
UNITED STATES MAGISTRATE JUDGE

Dated: 1/29, 2009
Rochester, New York